TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [illegible]

No. [illegible] 79

LEO SALOMON, JACQUES H. HECHT, ISIDORE M. KASTNER, ET AL., ETC., PLAINTIFFS IN ERROR,

vs.

STATE TAX COMMISSION OF NEW YORK

IN ERROR TO THE SURROGATE'S COURT OF NEW YORK COUNTY, STATE OF NEW YORK

FILED [illegible]

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SUPREME COURT OF THE UNITED STATES

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No. 809

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IN ERROR TO THE SURROGATES' COURT OF NEW YORK COUNTY, STATE OF NEW YORK

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IN COURT OF APPEALS OF NEW YORK

In the Matter of the Transfer Tax Upon the Estate of Myer Hecht, Deceased; Leo Salomon et al., as Executors, Appellants; State Tax Commission of New York, Respondent

STATEMENT UNDER RULE 234

This case comes up for review by this Court, pursuant to the Order of Affirmance by the Appellate Division, First Department. The Order of Affirmance was entered on or about March 4, 1927; the Order on Remittitur was entered on or about March 30, 1927.

This proceeding was commenced by a petition filed by the Executors of decedent's estate to the Surrogates' Court of New York County to fix and assess a transfer tax upon the Estate of the deceased.

The matter was duly referred to M. F. Loughman, Esquire, Appraiser, before whom Charles A. Curtin, Esquire, appeared as attorney for the State Tax Commission and Ehrich & Mencher, as attorneys for the Executors.

Such proceedings were had that a report was made to the Surrogates' Court by said Appraiser, and upon said report a pro forma order was entered on the 11th day of November, 1925, fixing and assessing the tax upon the Estate of the decedent. From said order an appeal was taken to the Surrogates' Court of New York County, and upon said appeal an order was entered May 7, 1926, affirming said pro forma order. From said order of affirmance an appeal is taken to this Court.

There is no change of parties or attorneys.

[fol. 2] IN SURROGATES' COURT OF NEW YORK COUNTY

In the Matter of the Transfer Tax Upon the Estate of MYER HECHT, Deceased

NOTICE OF APPEAL TO APPELLATE DIVISION

GENTLEMEN: You will please take notice that the Executors of this decedent's estate and Pauline Hecht individ-

ually, hereby appeal to the Appellate Division of the Supreme Court of the State of New York for the First Department, from the order of the Surrogate of the County of New York heretofore made and entered herein on the 7th day of May, 1926, affirming the order theretofore made and entered on the 11th day of November, 1925, fixing and assessing a tax upon the transfers of the property of said decedent under the law relating to taxable transfers of property, and from each and every part thereof.

Dated the 1st day of June, 1926.

Ehrich & Mencher, Attorneys for Executors, 20 Broad Street, Manhattan, N. Y. City.

[fol. 3] In Surrogates' Court of New York County

Order of Surrogate Denying Appeal and Affirming Order Fixing Tax—May 7, 1926

An appeal having been taken to this Court by the executors in the above named estate from the pro forma order entered in the Surrogates' Court on the 11th day of November, 1925, and said appeal having come on to be heard, and after hearing Ehrich & Mencher, attorneys for the executors and Charles A. Curtin, attorney for the State Tax Commission, in opposition, it is hereby

Ordered and adjudged that the appeal be and the same is hereby denied and the pro forma order fixing tax is affirmed.

John P. O'Brien, Surrogate.

[fol. 4] In Surrogates' Court of New York County

Order Assessing Tax—November 11, 1925

On reading the report, filed the 6th day of November, 1925, of M. F. Loughman, Esq., the appraiser appointed by order of this Court dated the 5th day of June, 1925, and it appearing that the said decedent died on the 2nd day of April, 1925, it is

Ordered and adjudged that the cash value of the property referred to in said report, the transfer of which is subject to the tax imposed by the Act relating to taxable transfers, and the tax to which the transfers are liable are as follows:

Beneficiary, Miriam Hecht, sister; amount received, $5,000; amount of exemption, 0; taxable amount $5,000; tax assessed, $100.

Beneficiary, Hannah Hecht, sister; amount received, amount of exemption, 0; taxable amount, $5,000; tax assessed, $100.

Beneficiary, Rita Adele Salomon, granddaughter; amount received, $10,000; amount of exemption, 0; taxable amount, $10,000; tax assessed, $100.

[fol. 5] Beneficiary, John Leo Salomon, Grandson; amount received, $10,000; amount of exemption, 0; taxable amount, $10,000; tax assessed, $100.

Beneficiary, Paula Ann Kastner, grand-daughter; amount received, $10,000; amount of exemption, 0; taxable amount $10,000; tax assessed, $100.

Beneficiary, Leo Salomon, son-in-law; amount received, $10,000; amount of exemption, 0; taxable amount, $10,000; tax assessed, $200.

Beneficiary, Jeanette H. Kastner, daughter; amount received, $15,000; amount of exemption, $5,000; taxable amount, $10,000; tax assessed, $100.

Beneficiary, Jacques H. Hecht, son; amount received, $17,320; amount of exemption, $5,000; taxable amount, $12,320; tax assessed, $123.20.

Beneficiary, Pauline Hecht, widow; amount received, $124,957; amount of exemption, $5,000; taxable amount, $119,957; tax assessed, $2,348.71.

Beneficiary, Executors for 1% class; amount received, $322,094.37; amount of exemption, 0; taxable amount, $322,094.37; tax assessed, $9,633.77.

James A. Foley, Surrogate.

[fol. 6] In Surrogates' Court of New York County

Notice of Appeal to Surrogate from Order Assessing Tax

Sir: Please take notice that the executors of the above named decedent's estate, including Pauline Hecht, both as

an executrix and individually, are dissatisfied with the appraisal herein of the property of the said Myer Hecht, deceased, and hereby object to the report of M. F. Loughman, Transfer Tax Appraiser, filed herein on the 6th day of November, 1925, and to the order or decree made herein, fixing, assessing and determining the Transfer Tax in respect to the property of the said decedent, and entered herein on the 11th day of November, 1925, and hereby appeal to the Surrogate from said appraisal and said assessment and determination of said tax and from said order or decree.

The grounds upon which said appeal is taken are:

First. That the tax of $2,348.71 imposed upon the sum of $124,957 less an exemption of $5,000, stated in the order aforementioned as the fair market value of the amount received by Pauline Hecht, widow, is unlawful and illegal, [fol. 7] for the reason that the said sum of $124,957 is included in and the transfer thereof is taxed in and as a part of the sum of $322,094.37, stated to be the fair market value of the remainder interest taxed against the "Executors for persons of 1% class" mentioned as the last item on said taxing order, and if said sum of $124,957 is taxed separately and in addition to the full and undiminished value of the principal fund of the residue held in trust during the lifetime of Pauline Hecht, and the residue of $322,094.37 is thereafter taxed in full, it will result in the taxation of a larger estate than the fair market value of the net estate of decedent as determined by the appraisal to have been transferred by the Last Will and testament of the decedent, which said method of taxation as imposed by said order, is confiscatory, arbitrary and discriminatory and constitutes a taking of the property of the appellants and those whom they represent without due process of law and without just compensation, all in contravention and violation of the Federal and State Constitutions, and

Second. That the value of the transfer stated in said appraiser's report and in the order assessing tax to "Executors for 1% Class" at the sum of $322,094 is not the fair market value of the remainder after the life estate of the widow, Pauline Hecht, and that the tax assessed by said order in the sum of $9,633.77 on said remainder for persons in the 1% class is unlawful and illegal, in that the said

remainder value and the fair market value thereof is overvalued by the sum of $124,957 or more and the tax assessed [fol. 8] on said overvaluation is confiscatory, arbitrary, discriminatory and unlawful, and it constitutes the taking of property without due process of law and the taking of private property for a public use without just compensation, all in contravention and violation of the Federal and State Constitutions.

Third. That the erroneous and excessive taxation hereinbefore complained of in paragraphs marked "First" and "Second" of this appeal, contravenes and is in violation of Article 1, Section 6, of the Constitution of the State of New York and is contrary to and violates the 5th and 14th Amendments of the Constitution of the United States, in that the assessment of a tax as herein complained of constitutes a taking of the property of the appellant and those whom they represent for public use without just compensation and without due process of law, for the reason that, whereas, in and by the report of the Transfer Tax Appraiser on which the order assessing tax herein is based, the fair market value of decedent's entire net estate as of the date of decedent's date set forth in Paragraph "Third" of said report as having been transferred to the persons named in decedent's Will, is stated to be the sum of $405,414.37, the tax as assessed is assessed and fixed by the aforementioned order or decree on property of the value of $530,371.37, or the sum of $124,957 greater than the fair market value of the entire net estate which the appraiser reports that the above named decedent owned and was seized and possessed of at the time of his death.

And the executors herein and Pauline Hecht, individu- [fol. 9] ally, appeal from said order and from each and every part thereof.

Dated New York, December 21, 1925.

Ehrich & Meucher, Attorneys for Executors, No. 20 Broad Street, New York City.

To Charles A. Curtin, Attorney for State Comptroller; Martin G. McCue, Clerk of the Surrogates' Court of New York County.

IN SURROGATES' COURT OF NEW YORK COUNTY

In the Matter of the Appraisal under the Transfer Tax Law of the Estate of MYER HECHT, Deceased

APPRAISER'S REPORT

To the Surrogates' Court of the County of New York:

I, M. F. Loughman, Transfer Tax Appraiser, having been designed by Hon. James A. Foley, Surrogate of the [fol. 10] County of New York, by an order duly made and entered on the 5th day of June, 1925, to appraise the estate of the above-named decedent, pursuant to the provisions of the Law relating to taxable transfers of property, and the statutory notice my mail having been duly given herein to all the persons entitled thereto as provided in Section 230 of the Tax Law as appears by copy of such notice and affidavit of mailing thereof hereunto annexed, and having held an appraisal on the 4th day of November, 1925, at the Office of the Transfer Tax Appraiser for the County of New York, and having heard the allegations and proofs of the parties then and there appearing before me and offering the same, and having given due consideration to the affidavits and other papers submitted herein, and having made due and careful inquiry into all the matters and things brought before me in this proceeding, do now make and file the following report:

First. I report that the decedent herein died a resident of the State of New York on the 2nd day of April, 1925, leaving a Last Will and Testament, copy of which is hereunto annexed, which was duly admitted to probate by this Court on the — day of ——, 19—, and that thereafter on the 16th day of April, 1925, Letters Testamentary upon the estate of the said decedent were duly issued by this Court to Pauline Hecht, of 2372 Broadway, New York City, Leo Salomon, of Lynwood Ave., Cedarhurst, L. I., Jacques H. Hecht, of 2372 Broadway, Isidore M. Kastner, of 272 West 96th St., New York City, as Executors.

[fol. 11] Second. I further report the following appearances in this proceeding: Charles A. Curtin, Esq., Attorney for State Tax Commission, 220 West 40th Street, New

York City; Ehrich & Mencher, Esqs., Attorneys for Executors, 20 Broad Street, New York City.

Third. I further report that I found the property left by the decedent herein or in which said decedent had any beneficial interest or appointed or transferred in contemplation of death by decedent, to consist of the items set forth in the annexed affidavit for appraisal, and that the fair market value of each of the said items at the date of decedent's death is the amount set down by me opposite such item in the column designated "Value as appraised in this proceeding," and that the sums properly to be allowed as deductions herein for funeral expenses, expenses of administration, debts of decedent, etc., are the amounts set down by me after the several items claimed in the column designated "Allowed in this proceeding," as a result of which I find the said assets and deductions to be as shown in the following summary:

Assets

Schedule A—Real Estate	$.00
Schedule B—Cash	1,943.87
Schedule C—Personal Effects	372.00
Schedule D—Mortgages, Notes and Accounts	55,120.84
[fol. 12] Schedule E—Insurance	22,722.95
Schedule F—Stocks and Bonds	372,794.88
Schedule G—Partnerships or Business Interests	.00
Schedule H—Gifts and Transfers	.00
Schedule I—Powers of Appointment	.00
Schedule J—Interest in other estates	.00
Schedule K—Other property	.00
Gross assets	$452,954.54

Subject to Deductions as follows:

Schedule L—Funeral and Administration	$17,953.40	
Schedule M—Debts	2,488.70	
Schedule N—Other deductions	.00	
Commissions (3)	27,098.07	
Total deductions		47,540.17
The total of all property passing upon the death of the decedent, I appraise at		$405,414.37

Fourth. I further report all the beneficiaries entitled at the time of decedent's death to an interest in this estate pursuant to the provisions of Law, and of the said decedent's Last Will and Testament, the relationship of such persons to decedent, the amount of the share or interest of each, and whether such share or interest is taxable in this proceeding, to be as hereinafter set forth, all of said beneficiaries being of full age and sound mind except as otherwise designated.

Beneficiaries	Relationship	Amount of interest	Amount of exemption	Amount of interest taxable
[fol. 13]				
Mt. Sinai Hospital ..	(No relation.)			
Legacy ..		$500 00	$500 00	$ 00
Montefiore Home for Chronic Invalids	(No relation.)			
Legacy ..		500 00	500 00	00
Miriam Hecht	(Sister.)			
Legacy ..		5,000 00	00	5,000 00
Hannah Hecht ..	(Sister.)			
Legacy ..		5,000 00	00	5,000 00
Rita Adele Salomon	(Grand-daughter.)			
Legacy ..		10,000 00	00	10,000 00
John Leo Salomon	(Grand-son.)			
Legacy ..		10,000 00	00	10,000 00
Paula Ann Kastner	(Grand-daughter.)			
Legacy ..		10,000 00	00	10,000 00
Leo Salomon				
Legacy ..		10,000 00	00	10,000 00
Jeanette H. Kastner	(Daughter.)			
Legacy ..		15,000 00	5,000 00	10,000 00
Jacques H. Hecht ..	(Son.)			
Legacy ..		15,000 00		
Specific bequest		2,320 00		
		$17,320 00	5,000 00	12,320 00

Beneficiaries	Relationship	Amount of interest	Amount of exemption	Amount of interest taxable
Pauline Hecht	(Widow.)			
Life estate in residuary estate of $322,094.37.				
Present value		124,957 00	5,000 00	119,957 00
Executors for the benefit of a person of the 1% class Corpus		322,094 37	00	322,094 37

Respectfully submitted,

Dated at New York, N. Y., —— —, ——.

Appraiser: M. F. Loughman.

[fol. 14] In Surrogate's Court of New York County

In the Matter of an Application to Adjust the Transfer Tax upon the Estate of —— ——, Deceased

Order Designating Transfer Tax Appraiser—June 5, 1925

On reading and filing the petition of Leo Salomon, one of the executors of the estate of said decedent, I do hereby, pursuant to the requirement of Section 230 of Article X of the Tax Law, direct M. F. Loughman, Esq., one of the appraisers appointed by the State Tax Commission under said statute, to fix under Article X, Chapter 60 of the Consolidated Laws of 1909, and the acts amendatory thereof and supplemental thereto, the fair market value of the property which was of the above-named decedent, to declare the value of such interest or interests therein as may be subject to the payment of the transfer tax, to declare exempt from such tax such interest or interests as he may [fol. 15] find to be exempt, and to do such other thing or things in the premises as he may be authorized to do, by virtue of his office under the said provision of law.

James A. Foley, Surrogate.

Original filed June 5, 1925. Martin G. McCue, Clerk of the Surrogates' Court.

In Surrogates' Court of New York County

In the Matter of an Application to Adjust the Transfer Tax upon the Estate of Myer Hecht, Deceased

Petition of Leo Salomon for Designation of Transfer Tax Appraiser

To the Surrogates' Court of the County of New York:

The petition of Leo Salomon respectfully shows:

First. That your petitioner is one of the executors of the estate of —— ——, deceased, and as such is a person in- [fol. 16] terested in the estate of the said deceased.

Second. That the said decedent departed this life on the 2nd day of April, 1925, at New York City; that the said deceased was a resident of the City and County of New York.

Third. That letters testamentary on the estate of said deceased were, on the 16th day of April, 1925, issued to your petitioner by the Surrogates' Court of the County of New York, and that his post-office address is Lynwood Avenue, Cedarhust, L. I.

Fourth. That, as your petitioner is informed and believes, the transfer of the property of said decedent, or some portion thereof or some interest therein, is or may be subject to the payment of the tax imposed by the law in relation to taxable transfers of property.

Fifth. That all persons who are interested in said estate who are entitled to notice of all proceedings herein, and their post-office addresses, are as follows:

The State Tax Commission.

Pauline Hecht, 2372 Broadway, New York City.

Sophie H. Salomon, Lynwood Avenue, Cedarhurst, New York.

Jeanette H. Kastner, 272 West 90th Street, New York City.

Jacques H. Hecht, 2372 Broadway, New York City.

[fol. 17] Leo Salomon, Lynwood Ave., Cedarhurst, L. I., New York.

Isidor M. Kastner, 272 West 90th Street, New York City.

Mt. Sinai Hospital, 100th St. & Fifth Ave., New York City.

Montefiore Home for Chronic Invalids, Gun Hill Road and Bainbridge Ave., Bronx, New York.

Miriam Hecht, 1930 Grand Concourse, Bronx, New York.

Hannah Hecht, 1930 Grand Concourse, Bronx, New York.

Rita Adele Salomon, Lynwood Avenue, Cedarhurst, L. I.

John L. Salomon, Lynwood Avenue, Cedarhurst, L. I.

Paula Ann Kastner, 272 West 90th St., New York City.

That all the above-named are of full age and sound mind, except Rita Adele Salomon, Lynwood Avenue, Cedarhurst, L. I.; John L. Salomon, Lynwood Avenue, Cedarhurst, L. I.; Paula Ann Kastner, 272 West 90th St., New York City; George Kastner, 272 West 90th Street, New York

City, all residing with their respective parents, the said Rita Adele Salomon being over the age of fourteen years and all the others being under the age of fourteen years.

[fol. 18] That the gross value of the estate of the decedent, wherever situated, is more than $10,000.

That no previous application has been made for an order granting the relief prayed for in this petition.

That there are no persons, other than those herein mentioned, interested in this proceeding.

Wherefore, your petitioner prays that you will designate an appraiser, as provided by law, to fix, under Article X, Chapter 60 of the Consolidated Laws of 1909, and the Acts amendatory thereof and supplemental thereto, the fair market value of the property which was of the above-named decedent, to declare the value of such interest or interests therein as may be subject to the payment of the transfer tax, to declare exempt from such tax such interest or interests as he may find to be exempt, and to do such other thing or things in the premises as he may be authorized to do by virtue of his office under the said provision of law.

Dated New York, June 2nd, 1925.

Leo Salomon, Petitioner.

[fol. 19] *Duly sworn to by Leo Salomon. Jurat omitted in printing.*

[fol. 20] In Surrogates' Court of New York County

In the Matter of the Appraisal under the Transfer Tax Law of the Estate of Myer Hecht, Deceased

Affidavit and Schedules

State of New York,
County of New York, ss:

Leo Salomon, executor of the estate of the above-named decedent being duly sworn in this proceeding for the determination of the tax, if any, to be paid upon the assets of the said estate under the Law in Relation to Taxable Transfers of Property, deposes and says that as such administrator executor deponent is personally familiar with affairs of the said estate, the property constituting the assets

thereof, their fair market value, and the debts, expenses and charges properly allowable as deductions therefrom, and makes the following return:

General Information

1. Date of death: April 2, 1925.
2. Resident of N. Y. County.
[fol. 21] 3. Did the decedent leave a will? (Answer "yes" or "no.") Yes.
(If the answer is "yes" attach copy of last will.)
4. Letters of testamentary, were issued on April 16, 1925, by the Surrogates' Court of N. Y. County.
5. The names and post office addresses of the executors or administrators are:
Name: Pauline Hecht. Post Office Address: 2372 B'way, N. Y. C.
Name: Leo Salomon. Post Office Address: Lynwood Ave., Cedarhurst, L. I.
Name: Jacques H. Hecht. Post Office Address: 2373 B'way, N. Y. C.
Name: Isidore M. Kastner. Post Office Address: 272 W. 90 St., N. Y. C.

Property in the Estate.

Schedule A—Real Estate:

6. Did the decedent at the time of death own any interest in real estate located within the State of New York, individually or jointly? (Answer "yes" or "no.") No.
If the answer is "yes" attach schedule of all interest in real estate, marked Schedule A, following the instructions for that schedule.

Schedule B—Cash:

7. Did the decedent at the time of death own any cash or have any money on deposit individually or jointly? (An-
[fol. 22] swer "yes" or "no.") Yes.
If the answer is "yes" attach Schedule of such cash and deposits, marked Schedule B, following instructions for that schedule.

Schedule C—Personal Effects:

8. Did the decedent at the time of death own any wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses or live stock, carriages, automobiles, boats, or any other personal chattels or whatever kind or nature including leases on real estate, wheresoever located? (Answer "yes" or "no.") Yes.

If the answer is "yes" attach Schedule C, setting forth in detail all such property, together with a fair market value thereof, following the instructions for that schedule.

If an appraisal is furnished specifying each item of personal property separately, this schedule need only contain the total of such appraisal, instead of setting forth each item.

Schedule D—Mortgages, Notes and Accounts:

9. Did the decedent at the time of death own any interest in bonds or mortgages, notes or accounts receivable individually or jointly? (Answer "yes" or "no.") Yes.

If the answer is "yes" submit Schedule D, itemizing all such property in detail, together with the face values and the estimated market values thereof, following the instructions for that schedul.

[fol. 23] Schedule E—Insurance:

10. Was any life insurance receivable by the *executor* administrator? (Answer "yes" or "no.") Yes.

If the answer is "yes" attach a detailed statement of such insurance, marked Schedule E, following the instructions for that schedule.

Schedule F—Stocks and Bonds:

11. Did the decedent at the time of death own any stocks or bonds or rights to subscribe thereto? (Answer "yes" or "no.") Yes.

If the answer is "yes," enter in schedule marked "F," a complete list of all the corporate stocks and bonds, including interest and dividends thereon, at the date of the decedent's death, together with the fair market values thereof, following the instructions for that schedule.

Schedule G—Partnership or Business Interests:

12. Did the decedent at the time of death own any interest in a partnership or an unincorporated business? (Answer "yes" or "no.") No.

If the answer is "yes" submit schedule marked "G," setting forth the interest at the date of death and the fair market value thereof at that time, following the instruction for that schedule.

[fol. 24] Schedule H—Gifts and Transfers:

13. (a) Did the decedent, during the period within two years prior to his death, make any transfer of property by way of gift or without a fair consideration in money or money's worth? (Answer "yes" or "no.") No.

(b) Did the decedent, at any time prior to two years before his death, make any transfer or create any trust in contemplation of or intended to take effect at or after death or in which he reserved to himself interest, without consideration? (Answer "yes" or "no.") No.

(c) Were any trusts created by the decedent, in existence at the time of death? (Answer "yes" or "no.") No.

If the answer is "yes" attach copies of all such trust instruments.

1

(d) Did the decedent create any trust in which he had solely or with another the power of revocation? (Answer "yes" or "no") No.

If the answer to any of the foregoing questions is "yes," submit in Schedule H, a statement of the details of each transfer and lists of the property transferred, together with its value at the date of death, following the instructions for that schedule.

Schedule I—Powers of Appointment:

14. Did the decedent have any power of appointment of property in any other estate? (Answer "yes" or "no.") No.

[fol. 25] If the answer is "yes" submit the details, hereof in schedule marked "I," following the instructions for that schedule, and showing whether such power of appointment was exercised, and if so, how.

Schedule J—Interest in Other Estates:

15. (a) Did the decedent at the time of death, own any interest in any other estate? (Answer "yes" or "no.") No.

If the answer is "yes," submit statement of such interest and the value thereof at the time of death, in Schedule J, following the instructions for that schedule.

(b) Did any remainder or reversion fall in or vest in possession or enjoyment by reason of the decedent's death? (Answer "yes" or "no.") No.

If the answer is "yes," submit a detailed statement thereof in Schedule J. The valuation of the property, however, is not required.

Schedule K—Other Property:

16. Did the decedent at the time of death own any miscellaneous property not included or accountable under any other schedule? (Answer "yes" or "no.") No.

If the answer is "yes" submit Schedule K, following the instructions for that schedule.

[fol. 26] Deductions

Schedule L—Funeral and Administrative Expenses:

17. Itemize the funeral expenses and administration expenses in Schedule L, following the instructions for that schedule.

Schedule M—Debts:

18. Itemize the debts of decedent in Schedule M, following the instructions for that schedule.

Schedule N—Other Deductions:

19. Itemize in Schedule N all items claimed by the administrator executor as proper deductions herein and not included in prior schedules, following the instructions for that schedule.

Schedule O—Beneficiaries:

20. Give in Schedule O a statement of the names of all persons beneficially interested in the estate, the nature of their respective interests, etc., following the instructions for that schedule.

Did any of the beneficiaries named in the decedent's will, if any, die prior to the decedent? (Answer "yes" or "no.")

If the answer is "yes" designate in Schedule O which beneficiary died prior to the decedent and show his survivors, and the relationship of such servivors to the decedent.

[fol. 27] General Affidavit

21. Deponent states that he has made a due and diligent search for property of every kind, nature and description left by the decedent, and has been able to discover only that set forth in the schedules accompanying this return and that no information of any other property of the decedent has come to the deponent's knowledge, and that the deponent verily believes the decedent left no property except as herein set forth; that Schedule A sets forth all the real estate in which the decedent at the time of death had any interest either individually or jointly with another; that Schedule B shows all cash or money which the decedent had on hand or on deposit, individually or jointly; that Schedule C shows all the personal effects, wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses or other live stock, carriages, automobiles, boats or any other personal chattels of whatever kind and nature, including leases on real estate wherever located; that Schedule D sets forth all mortgages held by the decedent and all claims due and owing to the decedent at the time of death, and all promissory notes or other instruments in writing for the payment of money in which the decedent died possessed; that Schedule E sets forth any

and all life insurance payable to the estate; that Schedule F sets forth all the corporate stocks, bonds and other securities owned by the decedent at the time of death; that Schedule G sets forth the interest of the decedent at the time of death in any copartnership or business; that Schedule H [fol. 28] sets forth all property wheresoever situated, of which the decedent at any time made any grant, bargain sale or gift in contemplation of death, or intended to take effect in possession or enjoyment at or after the death of the decedent, and all the transfers made within two years prior to the death without a valid and adequate consideration, and all trusts in which the decedent had solely or with another the power of revocation, and that the decedent made no gifts or transfers except as stated therein; that Schedule I sets forth all property over which the decedent had a power of appointment, whether such power was exercised or not; that Schedule J sets forth the interest of the decedent in any estate of another; that Schedule K sets forth any and all property owned by the decedent in which he had any right or interest whatsoever which was not set forth in the preceding schedules; that the deponent has carefully read the instructions printed on this form and that all the answers contained therein are in accordance with such instructions; that to the best of deponent's knowledge, and belief, the value shown for each item of property listed herein is the actual and full value at the time of decedent's death, and that the debts, expenses and charges entered herein, as deductions from the gross estate, are correct and legally allowable, and are not contested by the estate except as stated in the schedules.

22. The deponent further states that wherever in any part of this return or in any schedule the words "non" or "no" have been written, or wherever such schedule or any query has been left blank, such word or omission is to be [fol. 29] taken as equivalent to an affirmative allegation by deponent that the decedent left no property of any kind to which the schedule relates.

Leo Salomon, Executor.

Sworn to before me this 18th day of June, 1925. Yetta Messer, Notary Public. N. Y. Co. Clerk's No. 422. Reg. No. 6282. Kings Co. Clerk's No. 152. Reg. No. 6449. Commission expires March 30, 1926.

Schedule A

. . . . . .

Schedule B

Balance National City Bank	$967.89
Central Savings Bank	974.57
Union Dime Savings Bank	1.41
Total	$1,943.87

Schedule C

Personal Property as per appraisal attached	372.

[fol. 30] Schedule D

Mortgages:

Far Rockway Mortgage:	
Principal	8,500.
Accrued interest	141.66
Far Rockway Mortgage:	
Principal	13,250.
Accrued interest	229.75
87th Street Mortgage:	
Principal	28,000.
Accrued interest	401.33
Accounts receivable:	
Solomon Bros. & Hutzler—credit balance	4,273.51
Jacques H. Hecht—balance	228.01
Treas. of U. S. tax refund	96.58
Total	55,120.84

Schedule E

Mutual Life Insurance Co. Policy #259,820	8,612.62
Mutual Life Insurance Co. Policy #920,069	9,090.34
Mutual Life Insurance Co. Policy #878,537	5,019.99
Total	22,722.95

Schedule F

1M Armour 5½s of 1923 J J—Capital	922.50
Accrued interest	13.90
4 M United Kingdom 5½s of 1937 F A Cap	4,250.
Accrued int.	37.28
1M Anaconda 6s of 1953 F & A capital	10,945.
Aced. int.	111.83
2M U. S. Steel 5s of 1963 M & N capital	2,102.50
Aced. int.	41.94
[fol. 31]	
6M Anaconda 7s of 1938 F & A capital	6,007.50
Aced. int.	71.17
2M U. N. Y. & P. 5s of 1937 J & J capital	2,000.
Aced. int.	25.28
5M Amer. Smelting & Ref. 6s of 1947 AO	5,325.
Aced. int.	.83
5M West Shore 4s of 2361 JJ value	4,112.50
Aced. int.	50.56
5M Atch. Top. S. F. 4s Gen. of 1995 AO	4,475.
Aced. int.	.56
1M Western Union 6½s of 1936 FA capital	1,100.
Aced. int.	11.01
7M Atch. Top. S. F. 4s Gen. of 1995 AO cap	6,265.
Aced. int.	.78
10M Wilson 6s of 1941 AO cap	9,600.
Aced. int.	1.67
6M Atl. Coast Line 4s of 1952 M & S	5,505.
Aced. int.	20.67
2M Missouri Pac. 1st & Ref. 6s of 1949 FA	2,010.
Aced. int.	20.33
6M Amer. Tel & Tel 5½s of 1943 M & N	6,120.
Aced. int.	138.42
L 1,000 Japanese 5s of 1947 M & S	3,700.
Aced. int	13.89
2M Balt. & Ohio 4s of 1948 A & O	1,762.50
Aced int.	.22
5M Bing & Bing 6½s of 1950 MS capital	4,925.
Aced. int	27.99
3M Balt. & Ohio 4s of 1948 A & O	2,643.75

Accd. int.	.33
1M Nash. Chat. & St. Louis 1st Cons. 5s of 1928 A & O	1,020.
Accd. int.	.14

[fol. 32]

3M Balt. & Ohio 4s of 1948 A & O	2,643.75
Accd. int.	.33
2M Chic. Mil. & St. Paul Chic. & Missouri Division 5s JJ of 1926	1,930.
Accd. int.	25.28
5M Balt. & Ohio 4½s of 1933 M & S	4,593.75
Accd. int.	19.38
10S Bethlehem Steel 8% JJ Quart	1,100.
Accd. int.	00.
50S Bethlehem Steel 8% JJ Quart	5,500.
Accd. int.	00.
6M Bethlehem Steel 6s of 1948 FA	5,655.
Accd. int.	61.
4M Bethlehem Steel 6s of 1948 FA	3,770.
Accd. int	40.67
Forward	110,719.21

2

Forward	110,719.21
2M Ches. & Ohio 5s of 1939 M & N Capital	2,035.
Accrued Interest	41.94
5M Chile Copper 6s of 1932 A & O	5,275.
Accd. int.	.83
5M Chic. Mil. & St. P. 4½s of 1989 J & J	4,150.
Accd. int.	56.88
5M Chic. North West 4s of 1987 M & N	4,218.75
Accd. int.	83.89
5M CCC St. L. 4s of 1993 JD	4,100.
Accd. int	67.22
5M CCC St. L. 4s of 1993 JD	4,100.
Accd. int	67.22
5M Col Southern 4½s of 1935 M & N	4,637.50
Accd. int.	94.38
4M Copenhagen 5½s of 1944 J & J	3,840.
Accd. int.	55.61

[fol. 33]

7M Lyons 6s of 1934 M & N	
Accd. int.	5,827.50
	176.17
7M Bodeauz 6s of 1934 M & N	
Accd. int.	5,827.50
	176.17
7M Marseilles 6s of 1934 M & N	
Accd. int.	5,827.50
	176.17
5M Cont. Gas & Elec. 6½s of 1964 A & O	
Accd. int.	4,950.
	.90
4M Denver Rio Grande 4½s of 1936 J & J	
Accd. int.	3,435.
	45.50
10M French 8s of 1945 M & S	
Accd. int.	10,000.
	37.78
4M Great Northern 7s of 1936 J & J	
Accd. int	4,380.
	70.78
5M Swedish 6s of 1939 J & D	
Accd. int.	5,181.25
	89.17
2M General Cigar 6s of 1930 J & D	
Accd. int.	2,040.
	40.33
3M Japanese 6½s of 1954 F & A	
Accd. int.	2,711.25
	33.04
2600 Chinese 5s of 1951 J & D	
Accd. int.	1,275.
	44.58
5M Jamestown, Frank & Co. 4s of 1959 J & D	
Accd. int.	4,375.
	67.22
2M Louisville & Nash. 5s of 1937 M & N	
Accd. int.	2,100.
	41.94
3M Louisville & Nash. Un. 4s of 1940 J & J	
Accd. int.	2,816.25
	30.33
11M Louisville & Nash. AKC 4s of 1955 M & N	
Accd. int	9,900.
	184.56

[fol. 34]

5M Long Island Ref. 4s of 1949 M & S	
Accd. int.	4,131.25
	17.22
2M Lorillard 5s of 1951 FA	
Accd. int.	1,920.
	16.94
5M Lake Shore Mich. So. 4s of 1931 M & N	
Accd. int.	4,806.25
	83.89
5M Metro. Edison 6s of 1952 FA	
Accd. int.	5,150.
	50.83

2M N. Y. Ontario & West. 4s of 1922 M & S	1,320.
Acc. int.	6.89
2M Norfolk & Western 4s of 1996 A & O	1,807.50
Accd. int.	.22
70 Shares Deal Knitting Mills Preferred capital.	6,300.
Accd. int.	140.
2M Norfolk & Western P J. B. 4s of 1941 J & D	1,825.
Accrued Interest	26.89
6M New York Central 4s of 1934 M & N	5,670.
Accd. int.	100.67
2M Northern Pac. Prior 4s of 1997 J & J Quart.	1,680.
Accd. int.	.22
5M N. Y. Chic. & St. L. 4s of 1937 A & O	4,618.75
Accd. int.	.56
2M N. Y. Chic. & St. L. 6s of 1931 M & N	2,060.
Accd. int	50.33
10M N. Y. Telephone 6s of 1941 AO	10,700.
Accd. int	1.67
3M N. Y. Central 6s of 1935 MN	3,247.50
Accd. int.	75.50

[fol. 35]

2M N. Y. Rway Adj. of 1942 A & O	80.
12M N. Y. City's 4s of 1957 M & N	11,910.
Accd. int.	201.33
24M N. Y. City 4¼s of 1960 MS	24,540.
Accd. int.	87.83
23M N. Y. City 4½s of 1965 JD	24,581.25
Accd. int.	347.88
5M Oregon RR Nav. Cons. 4s of 1946 JD	4,443.75
Accd. int.	67.22
6M Pennsylvania 4s of 1948 MN	5,610.
Accd. int	100.67
2M Pennsylvania 4s of 1948 MN	1,870.
Accd. int.	33.56
1M Pennsylvania 7s of 1930 AO	1,088.75
Accd. int.	.19
2M Rio Grande Western 4s of 1939 JJ	1,687.50
Accd. int.	20.22
$3,750 St. Louis San Fran. 4s of 1950 JJ	2,784.38
Accd. int	37.92

$1,250 St. Louis San Fran. & Adj. 6s of 1955 A & O.	
Accd. int.	1,084.38
5M Southern Pacific 4s of 1955 J & J	.21
Accd. int	4,500.
1M Tenn. Elec. 6s of 1947 JD	50.56
Accd. int.	1,005.
5M Union Pacific 4s of 1947 JJ	20.17
Accd. int.	4,631.25
$100 Bond Progress Club	50.56
$500 Liberty 3½s of 1947 JD	50.
Accd. int.	506.41
$4,600 Liberty 2nd 4¼s of 1942 MN	5.20
Accd. int.	4,644.56
$1,050 Liberty 3rd 4¼s of 1928 MS	74.40
Accd. int.	1,066.41
	2.11
[fol. 36]	
2M Liberty 4th 4¼s of 1938 A & O	2,039.38
Accd. int.	39.43
29 Shares Deal Knitting Mills Preferred	2,320.
Total Schedule F	$372,794.88

Deductions

Schedule L

Funeral Expenses and Administration Expenses

Chas. N. Pollak—funeral director, coffin, etc	$933.40
Rev. Nathan Krass—officiating at funeral	100.
Adler's Monument and Granite Works, Inc. for mausoleum to be erected	6,700.
Attorneys' fees (estimated)	10,000.
Leo Salomon—Petty cash	10.
Friend, Wiener Donohue Advertising Co	120.
Petty Cash	5.
Valuation Co. of America—appraisal	25.
Executors' commissions	27,177.27
Total	$45,130.67

Schedule M

Debts

Benjamin Saltzer Physician	440.
Mark Rafalsky Co. rent for period April 1st, 1925 to October 1st, 1925 as per lease	1,812.48
[fol. 37] Mark Rafalsky Co. electric light	9.22
Estimated Federal Income Tax from January 1st to April 1st	190.
Estimated New York State Income Tax January 1st to April 1st	37.
Total	$2,488.70

Schedule O

List of Beneficiaries

Mt. Sina Hospital of the City of (exempt) New York—100th St. & Fifth Avenue	$500.
Montefiore Home for Chronic Invalids Gun Hill Road and Bainbridge Ave. Bronx, New York	500.
Miriam Hecht, sister, 1930 Grand Concourse, Bronx, New York	5,000.
Hannah Hecht, sister, 1930 Grand Concourse, Bronx, New York	5,000.
Rita Adele Salomon, grand-daughter, Lynwood Avenue, Cedarhurst, L. I. N. Y	10,000.
John Leo Salomon, grandson, Lynwood Avenue, Cedarhurst, L. I. N. Y	10,000.
Paula Ann Kastner, grand-daughter, 272 West 90th Street, New York City	10,000.
Leo Salomon, son in law, Lynwood Avenue, Cedarhurst, L. I	10,000.
Jeanette H. Kastner, daughter, 272 W. 90th Street, New York City—33 years old	15,000.
[fol. 38] Jacques H. Hecht, son, 39 years old, 2372 Broadway, New York City	15,000.
Plus twenty-nine shares of common stock of Deal Knitting Mills valued at	2,320.
Pauline Hecht, wife, 64 years old, 2372 Broadway, New York City, life interest in remainder of estate valued at about	300,000.

Contingent remainder to the three children of testator above-mentioned, Sophie H. Salomon, Jacques H. Hecht and Jeanette H. Kastner provided they survive Pauline Hecht.

(40 yrs.)

The remainder to children of deceased children if there be any.

In the case of Jacques Hecht if he die leaving a wife and children, his wife to get one third of his share.

[fol. 39] Transfer Tax Appraisal

Estate of Myer Hecht, New York City

United States Treasury Department, Internal Revenue Bureau

In the Matter of the Federal Estate Tax upon the Estate of Myer Hecht, Deceased

County and State of New York, ss:

Carl Ehrmann, being duly sworn, deposes and says: that he is associated with the Valuation Company of America, Appraisers, with offices at 350 Madison Ave., Borough of Manhattan, City of New York.

That he is now, and has been during the past 7 years an appraiser.

That he has appraised wearing apparel and jewelry and miscellaneous articles of the character similar to that incorporated in the schedules hereto annexed and is acquainted with the true market values of said articles.

That on the 16th day of May, 1925, he personally ex-
[fol. 40] amined the hereinafter property located at Belnord Apartment, corner 86th Street and Broadway, New York City, and from such examination and information obtained, is of the opinion that the fair, reasonable and market value of said property was, on the 2nd day of April, 1925, which is the date of death of deceased, as deponent is informed and believes, the sum of $372.00, as per schedules hereto annexed.

Deponent further says that he is not related to any of the parties and is not interested in this proceeding.

Carl Ehrmann.

Sworn to before me this 19th day of May, 1925. D. F. De Baun, Notary Public, Rockland County. New York County Clerk's No. 808. New York County Register's No. 7249. Commission expires March 30th, 1927.

[fol. 41] Jewelry:	Market value	
1 Waltham Watch in gold hunting case, #29205, engraved "M. H."	$10.00	
2 Small pearl studs, gold links	15.00	
1 Gentleman's gold ring set with one diamond 5/8 ct. one sapphire and one ruby	100.00	
1 Thin white gold watch chain, 11 links, with gold clasps	2.50	
1 Thin gold watch chain with locket, set with small diamond and 22 emerald chips	15.00	
1 Gold Horseshoe stick pin, set with 19 small diamonds in platinum	25.00	
5 Assorted gold stick pins	14.00	
3 Gold shirt studs with diamond chips	5.00	
1 Watch fob with Cameo and gold clasp	3.00	
1 14 kt. gold safety match box, monogramed "M. H."	2.50	
1 Assorted lot of gold collar buttons, shirt studs and cuff links, 12 pieces	5.00	
Total jewelry		$197.00
Wardrobe:		
1 Lot of assorted personal Wearing apparel	175.00	
Total wardrobe		175.00
Grand Total		$372.00

[fol. 42] Decedent's Last Will and Testament

I, Meyer Hecht, of the Borough of Manhattan, City of New York, State of New York, being conscious of the un-

certainty of human existence, do make, publish and declare this to be my last will and testament:

First: I direct that my just debts and funeral and testamentary expenses be paid as soon after my decease as may be practicable.

Second: I give and bequeath to the Mt. Sinai Hospital of the City of New York, the sum of Five hundred ($500) Dollars.

Third: I give and bequeath to the Montefiore Home for Chronic Invalids of the City of New York, the sum of Five hundred ($500) Dollars.

Fourth: I give and bequeath to my sister, Miriam Hecht, of the City of New York, the sum of Five thousand ($5,000) Dollars.

Fifth: I give and bequeath to my sister, Hannah Hecht, of the City of New York, the sum of Five thousand ($5,000) Dollars.

Sixth: I give and bequeath unto my beloved granddaughter, Rita Adele Salomon, the child of my daughter, Sophie H. Salomon, wife of Leo Salomon, the sum of Ten thousand ($10,000) Dollars; the sum of Ten thousand ($10,000) dollars unto my beloved grandson, John Leo Salomon, the son of my daughter, the said Sophie H. Solomon, wife of Leo Salomon; and the sum of Ten thousand [fol. 43] $10,000) Dollars unto my beloved granddaughter, Paula Ann Kastner, the child of my daughter, Jeanette H. Kastner, wife of Isidor M. Kastner, all of the City of New York.

Seventh: The said sums of money bequeathed to my grandchildren shall not be paid over to them by my Executors and Trustees hereinafter named until they shall respectively arrive at the age of twenty-one years, or being granddaughters, in the event of their marriage taking place before their arrival at the age of twenty-one years, upon the date of the marriage. That during such times as said moneys are directed to be held by my Executors and Trustees, they shall be held by said Executors and Trustees, to receive the rents, profits and income thereof, and to pay the

same to the mothers of the infants, and in the event of the death of the mothers, then to their fathers, to be applied to the maintenance, support and education of said infants, and said Executors and Trustees shall invest the said principal sums and keep the same invested.

Eighth: In the event of any of my grandchildren predeceasing me or dying before the termination of the trusts provided for said child in Paragraph Seventh herein, then his or her share shall be paid over to the mother of such child or children, if then living, and in the event of the prior death of such mother, then the said legacy shall revert to the residuum of my estate.

Ninth: Having advanced and given certain sums for the purposes of his business to Isidor M. Kastner, and not having so done on behalf of my son in law, Leo Salomon, [fol. 44] I hereby give and bequeath to my said son in law, Leo Salomon, of the City of New York, the sum of Ten thousand ($10,000) Dollars for his own use absolutely and forever, and insofar as may be necessary, I hereby confirm such advances in my lifetime unto my son in law Isidor M. Kastner, for his own use absolutely and forever.

Ten: Having heretofore made advances to my daughters, Sophie H. Salomon and Jeanette H. Kastner, and my daughter Jeanette H. Kastner having received a lesser portion than my daughter, Sophie H. Salomon, I hereby give and bequeath the sum of Fifteen thousand ($15,000) Dollars to my said daughter, Jeanette H. Kastner, for her own use absolutely and forever.

Eleventh: Having made advances as wedding gifts and otherwise to my daughters, Sophie H. Salomon and Jeanette H. Kastner, or having made provisions for each of them during my lifetime or herein, and not having made advances of like amounts to my son, Jacques H. Hecht, I hereby given and bequeath the sum of Fifteen Thousand ($15,000) Dollars, together with all of my common stock in the the Deal Knitting Mills, Inc., to my said son Jacques H. Hecht, for his own use absolutely and forever, and insofar as maybe necessary I confirm any and all such advances unto him for his own use absolutely and forever.

Twelfth: I give and bequeath unto my beloved wife Pauline, all my horses, carriages, jewelry of whatsoever kind and description, pictures, plate, household effects and [fol. 45] furniture, bric-a-brac and all personal effects unto me belonging, for her absolute use forever.

Thirteenth: In the event that I shall not have contracted for a mausoleum large enough to hold twelve bodies to include the remains of my daughter, Rita Hecht, I hereby order and direct my Executors and Trustees to spend a sum not exceeding Five Thousand ($5,000) Dollars for the building and completion of such structure, and the same to be erected on my cemetery plot in Salem Fields, Brooklyn, New York.

Fourteenth: All the rest, residue and remainder of my property and estate, as well real as personal, and wheresoever situated, which at the time of my death shall belong to me or be subject to my disposal by Will, I give, devise and bequeath to my Executors and Trustees hereinafter named in trust, nevertheless, to invest the same and to keep the same invested, and to receive the rents, issues, income and profits therefrom, and after defraying all taxes and other lawful charges upon the same, to pay the net income thereof to the use of my wife, Pauline Hecht, during her life, absolutely.

The provision herein to my said wife as aforesaid I hereby declare is intended to be and is so given to her in full satisfaction and in lieu of and for her dower, which she may or can in any wise claim or demand out of my estate.

Fifteenth: Upon the death of my said wife, Pauline, I direct my Executors and Trustees "to divide the said estate so held in trust into such number of equal shares as shall [fol. 46] be equal to the number of my children who shall survive my said wife, and of my children who shall have died leaving issue who shall survive her, and I give, devise and bequeath one of each of the said shares unto each of my said children who shall survive her and one of each of the remaining said shares I separately give, devise and bequeath unto my executors and Trustees in trust, nevertheless, respectively for the issue of each other child of mine

who shall have died either before me or before my said wife leaving issue her surviving, in equal shares per stirpes and not per capita, and to pay respectively each share in equal shares to such issue of such of my said children when they shall respectively arrive at the age of twenty-one years; or being my granddaughters in the event of their marriage taking place before their arrival at the age of twenty-one years, upon the date of the marriage." That during such times the said moneys are directed to be held by my Executors and Trustees they shall be held to receive the rents, profits and income thereof and to pay the same to the then living parent of said infants to be applied to the maintenance, support and education of said infants, and if no one of the parents of the said infants be then living, my said Executors and Trustees shall apply the said rents, profits and income to the maintenance, support and education of said infants, and said Executors and Trustees shall invest the said principal amounts and keep the same invested. In the event however, that my said son Jacques H. Hecht should die before my said wife, leaving both a wife and child or children surviving my said wife, then upon the death of my wife I hereby direct that his said share or the share of his said children shall be divided [fol. 47] into one third and two thirds parts, and only the two-thirds part thereof shall be subject to the aforesaid trust for his issue, and the other one third part thereof I hereby give, devise and bequeath to his said wife to her own use absolutely and forever, but should there be no child or children of my said son and said wife then surviving, his said wife shall receive no share in my said estate.

Sixteenth: I hereby authorize and empower my said Executors and Trustees and the survivors or the survivor of them to sell and dispose of all my real estate or personal property of which I may die seized or possessed as aforesaid, either at public or private sale, in the exercise of their best judgment, and to execute and deliver proper contracts and deeds for the legal conveyance of the same and to take back purchase money mortgages for part consideration for said sale or sales, and in the event of a proper occasion arising, they are further authorized in

the event of not making a sale, to make, execute and deliver leases of the same for such time and upon such terms as to them may seem meet and proper, and always looking to the best interests of the estate.

Seventeenth: I hereby authorize and empower my Executors and Trustees or the survivors or survivor, successor or successors, or the one, or those thereof, who shall qualify and shall be Executor and Trustee or Executors and Trustees for the time being, of this my Last Will and Testament, if, in his or their discretion, it shall seem expedient to retain any of my property in the same form of investment [fol. 48] in which it may be at the time of my death, any law to the contrary notwithstanding. And I hereby declare and it is my Will, that my Executors and Trustees, or those who may be acting, or their successor or successors, shall not be restricted to the investments provided by law in which Executors and Trustees may invest, but shall have full power and authority to invest in any securities, bonds or other investments, which in his or their judgment are safe, and for the best interests of my estate, and that all such property, whether in the original or the converted state, shall be subject to the powers, provisions, regulations and trusts herein contained.

Eighteenth: All legacies, hereby bequeathed, and all devises hereby given, are bequeathed and given free and clear of all transfer taxes and all other taxes imposed upon the right of inheritance or succession; and all such taxes shall be paid by my Executors and Trustees out of my residuary estate, and not out of such legacies or devises or by such legatees or devisees, nor shall such taxes be deducted from such legacies or devises.

Nineteenth: I hereby nominate, constitute and appoint my beloved wife, Pauline Hecht, my brother-in-law, Adolph Wurzburger, my beloved son, Jacques H. Hecht and my sons in-law, Leo Salomon and Isidor M. Kastner and the survivor or survivors of them Executrix and Executors, Trustee and Trustees of this my Last Will and Testament, and I desire that no bond or other security for the performance of their duties shal be given by them or either of them.

Twentieth: In my two safe deposit boxes will be found life insurance policies, three in the Mutual Life of the City [fol. 49] of New York, Nos. 259280A, 878537 and 920069 and in the Northwestern Mutual Life of Milwaukee, Wisconsin, policy No. 199302, wherein the beneficiary mentioned is my beloved wife, Pauline Hecht. In such boxes are club bonds and other securities and savings bank books.

Lastly: I hereby cancel and revoke any other former Wills or Codicils by me heretofore made.

In witness whereof, I have hereunto set my hand and seal this 27th day of November, Nineteen Hundred and Seventeen.

Myer Hecht.

On this 27th day of November, Nineteen Hundred and Seventeen, the above-named Testator, Myer Hecht, in our presence subscribed and sealed the foregoing instrument, and declared the same to be his Last Will and Testament, and thereupon we, at his request, and in his presence, and in the presence of each other have hereunto subscribed our names as attesting witnesses.

Louis Maxwell Cohen, 251 West 92nd St., New York City. Berthold S. Horkheimer, 63 Esplenade, Beechmont Park, New Rochelle, N. Y. C. Agnes Berard, 213—11th St., Brooklyn, N. Y.

[fol. 50] In Surrogates' Court of New York County

In the Matter of Proving the Last Will and Testament of Myer Hecht, Deceased

Affidavit Proving a Correct Copy of the Will Filed for Probate

County and State of New York, ss:

We Estelle Gallen and Rose R. Sobel being duly and severally sworn say, each for herself, that she has carefully compared the foregoing paper with the original thereof dated the 27th day of November, 1925, about to be filed for

probate, and that the same is in all respects a true and correct copy of said instrument and of the whole thereof.

Estelle Gallen, Rose R. Sobel.

Sworn to before me this 7th day of April, 1925. Yetta Messer, Notary Public, New York County. N. Y. Co. Clerk's No. 422. Reg. No. 6282. Kings Co. Clerk's No. 152. Reg. No. 6449. Commission expires March 30, 1926.

[fol. 51] CHAMBERS OF THE SURROGATES' COURT OF NEW YORK COUNTY

REQUEST TO SUPERINTENDENT OF INSURANCE FOR VALUE OF LIFE ESTATE

New York, October 27, 1925.

Estate of Myer Hecht, Deceased.
Date of Death, April 2, 1925.

DEAR SIR: In pursuance of Chapter 483, Laws of 1885, and the acts amendatory thereof and supplemental thereto, you are hereby requested to determine and ascertain the values of the following Estates, Annuities and Interest:

Name	Age	Legacy or estate	Value or amount
Pauline Hecht	64	Life estate in	$322,094.37

To the Superintendent of Insurance Department, State of New York.

Yours Respectfully, M. F. Loughman, Appraiser.

Return to Transfer Tax Bureau, 220 W. 40th Street, New York City.

[fol. 52] RETURN OF SUPERINTENDENT OF INSURANCE STATING VALUE OF LIFE ESTATE

State of New York, Insurance Department

Estate of Myer Hecht, Deceased

Albany, October 28, 1925.

DEAR SIR: In reply to your application of Oct. 27, 1925, I hereby certify to the present values as follows:

Name	Legacy	Present value April 2, 1925
Pauline Hecht	Life estate in $322,094.37	$124,957.

Yours very truly, James A. Beha, Superintendent.

To Hon. M. F. Loughman, Appraiser, New York County, New York, N. Y.

Mailed to Transfer Tax Bureau, 220 W. 40th Street, New York City.

Attention of Mr. Stalhuth.

[fol. 53] IN SURROGATE COURT OF NEW YORK COUNTY

OPINION OF SURROGATE

O'BRIEN, S.:

On this appeal by the executors from the order fixing the transfer tax the constitutionality of chapter 144 of the Laws of 1925, amending section 230 of the Tax Law, is questioned. In the following excerpt from the sixth paragraph of section 230 the words in italics indicate the portion added to the section by the amendment: "When property is transferred in trust or otherwise, and the rights, interests or estates of the transferees are dependent upon conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, *which tax shall be computed on the full, undiminished value of such property at the time of the transfer without deduction for*

or on account of any intervening estate or interest, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred, and the surrogate shall enter a temporary order determining the amount of said tax in accordance with this provision; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this article, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article, *computed upon the full, undiminished value of the property as aforesaid.*" The act took effect March 16, [fol. 54] 1925. The decedent died April 2, 1925. The report of the transfer tax appraiser has been prepared in accordance with the requirement of the statute. By the will of decedent the residuary estate is given in trust to pay the income to his wife, Pauline Hecht, during her life. On her death the remainder is to pass to the children or issue of deceased children. The residuary estate is appraised at $322,094.37. The value of the widow's life estate, computed by the superintendent of insurance on her expectancy of life at her age (64) at the date of decedent's death, is $124,957. The tax on this transfer is $2,348.71. The residuary estate of $322,094.37 is taxed against the executors for the benefit of the 1 per cent. class. The tax is $9,633.77. It is contended by the appellants that the imposition of the tax on the life estate of the widow plus the tax on the entire residuary estate is a violation of the provisions of the federal and state constitutions prohibiting the taking of property without just compensation and without due process of law in that a tax is being imposed "on more property than decedent owned at his death." The appeal must be denied. If the statute did in fact and law impose a tax as of the date of the death of the decedent on the entire fund as well as on the value of the life estate the legality of its provisions might be open to serious question. This is not the effect of the enactment. Section 230 must be read and construed in connection with section 241 of the Tax Law, which was also amended by

chapter 144 of the Laws of 1925. The second paragraph of section 241 provides as follows: "Whenever the tax on a contingent remainder has been determined at the high[fol. 55] est rate which on the happening of any of said contingencies or conditions would be possible under the provisions of this article, the tax commission, in the counties wherein this tax is payable direct to it, and in all other counties the treasurer of said counties, respectively, when such tax is paid shall retain and hold to the credit of said estate the tax assessed upon such contingent remainders and the tax commission or the county treasurer shall deposit the amount of tax so retained in some solvent trust company or trust companies or savings banks in this state designated by the state comptroller, to the credit of the state comptroller on account of such estate paying the interest thereon when collected by them to the executor or trustee of said estate, to be applied by said executor or trustee as provided by the decedent's will. Upon the happening of the contingencies or conditions whereby the remainder ultimately vests in possession, if the remainder then passes to persons taxable at the highest rate, the state comptroller on the certificate of the tax commission, shall turn over the amount so retained to the state treasurer as provided herein and by section two hundred and forty of this chapter, of if the remainder ultimately vests in persons taxable at a lower rate or a person or corporation exempt from taxation by the provisions of this article, the state comptroller on the certificate of the tax commission shall refund any excess of tax so held to the executor or trustee of the estate, to be disposed of by said executor or trustee as provided by the decedent's will. Executors or trustees of any estate may elect to assign to and deposit with the tax commission or the county treasurer, bonds or other securities of the estate [fol. 56] approved by the tax commission, both as to the form of the collateral and the amount thereof, for the purpose of securing the payment of the tax on said remainder, which said bonds or other securities, shall be held by the tax commission, or the county treasurer, to the credit of said estate until the actual vesting of said remainders, the income therefrom when received by the tax commission or the county treasurer to be paid over to the executor or trustee during the continu-

ance of the trust estates." It appears from the foregoing section that the cash or its equivalent required to be deposited covering the amount of tax due on the value of the undiminished remainder is in fact merely security for the subsequent payment of the tax. The state receives no part of the money until the actual vesting. The entire income of the amount deposited is paid to the executor or trustee. Instead of working a hardship as claimed by the appellants the provision operates for the benefit of the interested parties. There is no diminution of the income of the life tenant and the remainderman is not called upon to pay any of the tax until he receives the undiminished fund. There is a provision in the amendment of section 230 for the filing of a bond in case the personalty is insufficient to pay the tax. The provision for the taxation of remainders at their undiminished value became a part of the Tax Law by chapter 284 of the Laws of 1897. It was omitted when chapter 76 of the Laws of 1899 was enacted. It was restored by chapter 173 of the Laws of 1901 and has been on the Tax Law since that time. Until the enactment of the present amendment, however, it applied only to those remainders, the taxation of which was suspended in original transfer tax proceedings. The validity of the provisions [fol. 57] taxing full undiminished remainders was sustained by the Court of Appeals in Matter of Seligmann (170 App. Div. 837, aff'd 219 N. Y. 656). In that case the will of the decedent provided that certain shares of a trust fund should be paid to his sons when they reached the ages, respectively, of twenty-one, twenty-five and thirty years, the income to be paid to them in the meantime. The value of each installment was appraised at $70,573.43. The appraiser fixed the values of the temporary life estates of each of the sons at certain amounts and the order fixed the tax on these respectively, suspending the tax on the remainders. When one of the sons had arrived at the age of twenty-one years and the other at twenty-five, application was made to fix the tax on the remainders. The order entered on the application fixed the tax in each case on the difference between the value of the temporary life estate and the value of the installment payable to each. The court reversed the order and held that the tax should be imposed on $70,573.43, the value of the installment of

each; in other words, upon the full undiminished value of the principal of the installment. The requirement in the amendment of the deposit of cash or securities to insure the ultimate payment of the tax is within the powers of the Legislature. Prior to the enactment of chapter 800 of the Laws of 1911 a tax was imposed on contingent remainders at the highest possible rate. As the tax was to be paid out of the property transferred and accrued at the date of decedent's death the life tenant was deprived of the income from the amount of so much of the principal as was applied to the payment of a tax which in most cases was greater than that ultimately found to be due. The in-[fol. 58] equitable result of the operation of the statute was recognized in Matter of Brez (172 N. Y. 609). A remedy was suggested to the Legislature in the opinion in that case, written in 1902. By chapter 800 of the Laws of 1911 sections 230 and 241 of the Tax Law were amended so that in lieu of the payment in cash of the tax on contingent remainders, cash or securities might be deposited for the difference between the tax which would be due if the contingencies had happened at the date of the appraisal and the tax assessed at the highest rate. This amendment, while lessening to a considerable extent the hardship to the life tenant, did not completely eliminate it, for he was still deprived of the income on the so-called minimum tax upon the remainder. By the enactment of the amendment of 1925, which is under discussion here, the life tenant receives the income on the entire remainder, the remainderman receives the remainder unimpaired and is not called upon to pay the tax until it actually vests in his possession, the only loss or disadvantage to any of the interested parties being the (1) pro tanto loss to the life tenant of the income upon that portion of the fund used to pay the tax on the life tenant's interest, and (2) the loss in principal to the remainderman of the same amount. In discussing a question arising under the Tax Law as it stood in 1917, and prior to the amendment here in question, Judge Cardozo said (Matter of Parker, supra, 226 N. Y. 260, at page 264): "Everywhere the scheme disclosed is absolute safety for the state with a minimum of hardship for the life tenant." Under these more recent amendments this language has greater force, for there is still further amelioration of the

hardship upon the life tenant. The order fixing tax is affirmed. Submit order on notice.

[fols. 59 & 60] STIPULATION WAIVING CERTIFICATION

It is hereby stipulated that the foregoing are true copies of the notice of appeal to the Appellate Division, the order of Surrogate John P. O'Brien, appealed from and all the papers used by the Surrogate in making said order, and the whole thereof now on file in the office of the Clerk of the Surrogates' Court for the County of New York, and that certification thereof is hereby waived.

Dated New York, September 15th, 1926.

Ehrich & Mencher, Attorneys for Appellants.
Charles A. Curtin, Attorney for Respondent.

[fol. 61] IN SURROGATES' COURT OF NEW YORK COUNTY

In the Matter of the Transfer Tax Upon the Estate of Myer Hecht, Deceased; Leo Salomon et al., as Executors, Petitioners-Appellants; State Tax Commission of New York, Respondent

NOTICE OF APPEAL TO COURT OF APPEALS

Please take notice that the petitioners herein, Leo Salomon, Jacques H. Hecht, Isidore M. Kastner and Pauline Hecht, as executors of the Last Will and Testament of Myer Hecht, deceased, and Pauline Hecht, in her own right, hereby appeal to the Court of Appeals of the State of New York from the order of the Appellate Division of the Supreme Court for the First Department entered herein in the Office of the Clerk of the Appellate Division of the Supreme Court for the First Department on or about the 4th day of March, 1927, affirming the order of the Surogates' Court of the County of New York entered herein on the 7th day of May, 1926, which said order of the Surrogates' Court of the County of New York affirmed the pro forma order entered in the said Court on the 11th day of November, [fol. 62] 1925, fixing the Transfer Tax in the estate of said decedent, and from the whole and each and every part of said order of the said Appellate Division.

This appeal is taken as of right under and by virtue of subdivision 1 of Section 588 of the Civil Practice Act, on the ground that there is directly involved in this proceeding the contruction of the Constitutions of the State of New York and of the United States.

Dated May 9th, 1927.

Yours, &c., Ehrich & Mencher, Attorneys for Appellants. Office and P. O. Address: 20 Broad Street, New York, N. Y.

To Hon. Martin G. McCue, Clerk of the Surrogates' Court of the County of New York, Hall of Records, Chambers Street, New York, N. Y.; Charles A. Curtin, Esq., Attorney for State Tax Commission, 220 West 40th Street, New York, N. Y.

[fol. 63] In Supreme Court of New York, Appellate Division

In the Matter of the Transfer Tax upon the Estate of Myer Hecht, Deceased; Leo Salomon et al., as Executors, Appellants; State Tax Commission of New York, Respondent.

Order of Affirmance on Appeal from Surrogate—March 4, 1927

An appeal having been taken to this Court by the Executors from the order of the Surrogates' Court of the County of New York, entered in the Surrogates' Court on the 7th day of May, 1926, affirming an order entered on [fol. 64] the 11th day of November, 1925, fixing transfer tax, and said appeal having been argued by Mr. Edmund O. Austin of counsel for the appellant, and by Mr. Seth T. Cole of counsel for the respondent and by Mr. Russell L. Bradford of counsel for Taylor, Blanc, Capron & Marsh, Amici Curiae; and due deliberation having been had thereon,

It is hereby unanimously ordered and adjudged that the order so appealed from be and the same is hereby affirmed with costs.

Enter: V. J. D., J. S. C.

[fol. 65] In Surrogates' Court of New York County

In the Matter of the Transfer Tax upon the Estate of Myer Hecht, Deceased

Order on Remittitur—March 30, 1927

Leo Salomon, et al., as executors of the Last Will and Testament of Myer Hecht, deceased, and Pauline Hecht, one of said executors and beneficiary under the will, individually, having appealed to the Appellate Division of the Supreme Court of the State of New York for the First Department from the order of the Surrogates' Court of the County of New York entered May 7th, 1926, affirming the order theretofore made and entered on the 11th day of November, 1925, fixing and assessing a tax upon the transfers of the property of said decedent under the law relating to taxable transfers of property, and the said appeal having been duly argued in the said Appellate Division of the Supreme Court of the State of New York, and after due deliberation the said Appellate Division of the Supreme Court of the State of New York having directed that the [fol. 66] order so appealed from be affirmed with costs and disbursements, and having remitted the proceedings herein to this Court to be proceeded upon according to law.

Now, upon reading and filing the remittitur from the Appellate Division of the Supreme Court of the State of New York for the First Department and upon motion of Charles A. Curtin, attorney for the State Tax Commission, respondent, it is

Ordered that the said order of the Appellate Division of the Supreme Court of the State of New York for the First Department be and the same is made the order of this Court; and it is

Further ordered that pursuant to the aforesaid order, the State Tax Commission of the State of New York recover from the estate of Myer Hecht, deceased, the sum of $78.70 costs and disbursements as taxed.

James A. Foley, Surrogate.

[fol. 67] OPINION

PROSKAUER, J.:

These appeals concern the constitutionality and interpretation of the amendments to Section 230 of the Tax Law made by Chapter 144 of the Laws of 1925. Prior to the enactment of that statute, under this section a contingent remainder was assessed for taxation at the highest rate possible on the happening of any contingencies and the tax was presently levied. By Section 241 it has been provided that the State should retain and hold to the credit of the estate so much of the tax assessed upon such contingent remainders as represented the difference between the tax at the highest rate and the tax upon such remainders which would be due if the contingencies had happened at the date of the appraisal. This difference, subject to the payment of interest thereon, was thus retained by the State, with certain alternatives as to the giving of a bond, and when the reminder finally vested in possession there was a proper adjustment with the estate. It was the settled practice under this statute to compute by mortality tables the value of the life estate and the value of the remainder. An exception to this was that in certain unusual cases, where it was impossible to comput by the mortality tables furnished by the Superintendent of Insurance the present worth of the future contingent remainder, the payment of the tax was postponed until the date of vesting and the value of the remainder was then computed on the basis of the market worth of the corpus at the time of the testator's death without any deduction for the value of the intervening life estate.

[fol. 68] Under certain earlier forms of the statute this latter method was held to be valid in Matter of Seligmann (170 App. Div. 837; affd., 219 N. Y. 656). The change effected by the 1925 statute was to require the present assessment of the contingent remainder to be "on the full, undiminished value of such property at the time of the transfer without deduction for or on account of any intervening estate or interest." It further required the tax to be computed upon this valuation.

Section 241 was also amended correspondingly to provide that the Tax Commission should retain not merely

the above stated portion of the tax, but should retain the entire tax until the time of vesting, in effect, as security for the ultimate payment of the tax. This deposit may be made in cash or in approved bonds or securities, and until the actual vesting of the remainders, the income thereof is required "to be paid over to the executor or trustee during the continuance of the trust estates."

The decedent Myer Hecht left a residuary estate in trust amounting to $322,094.37. The widow was the beneficiary for life with contingent remainder. Her life interest as fixed on the mortality tables is worth $124,957. An inheritance tax has been levied on that amount against her life interest, and a tax in addition, based on the entire corpus of the trust estate, namely, $322,094.37, has been levied on the remainder which the State Tax Commission insists must be paid, to be held by it subject to the provisions of Section 241, the income on this tax to be paid to the executors during the pendency of the trust. The Surrogate [fol. 69] has approved this procedure. The appellants claim, first, that the statute of 1925 should not be so construed, and second, that if so construed it is unconstitutional.

On the question of construction the appellants contend that the Legislature could not have intended that the words "which tax shall be computed on the full, undiminished value of such property at the time of the transfer without deduction for or on account of any intervening estate or interest" should involve present taxation of a future interest at its face value; that the words "such property" must be interpreted to mean trust property, and that the statute should be construed, therefore, to mean that the value of the entire trust should not be diminished by any intervening life estate. This construction would render the amendment meaningless. The statute is too plain for such subtlety. It means exactly what it says, that contingent remainders are to be assessed for the purposes of the Act without deduction of the value of the life estate.

We are, therefore, to determine whether this statute violates any constitutional provision. The appellants contend that where the entire fund is $322,094.37, the life estate is valued at $124,957 and the remainder is valued at $322,094.37, there has been taxed a transfer of property amount-

ing by $124,957 more than in fact passed under the testator's will. This argument is plausible, but unsound. It ignores completely the element of time and the simple mathematical concept of present worth. If the State became at once beneficially entitled to the tax on the contingent remainder, the mathematical conclusion reached by [fol. 70] the appellants would be correct. But the State does not presently get this tax. The income from the cash or securities deposited to cover the tax goes back to the estate during the whole duration of the trust. There is no difference between taxing a contingent remainder on the assessment of its present worth, with a tax payable presently, and taxing it, with a tax payable at the date of vesting, on its face value rather than its present worth. One is the exact arithmetical equivalent of the other. No property right is invaded by this scheme of taxation. Viewed as an entity, the estate is not harmed because in effect it merely deposits security for the tax. The life tenant is not harmed because she does not lose the income by premature payment of the tax, but is safeguarded in her enjoyment of that income by the provisions of Section 241. The remainderman loses an advantage that he had before the amendment, but is deprived of nothing to which he is entitled. Prior to the amendment he would at the date of vesting have received his remainder subject to a tax based on its present worth at the date of death. Under Matter of Seligmann (170 App. Div. 837; affd., 219 N. Y. 636), if the tax was not payable until the date of vesting, it was proper for the authorities to assess at the face value of the remainder and not on its present worth. That is exactly what is done under the revised scheme. There is no double taxation for the State does not secure the beneficial enjoyment of the tax until the date of vesting. It is true that the Seligmann case was decided on the basis of one of the exceptions to the old procedure, where the Superintendent of Insurance's tables did not furnish sufficient basis [fol. 71] for working out the present value of the contingent remainder, but the constitutional question underlying both cases is the same. The State invades no constitutional right by assessing a contingent remainder at its face value rather than its present worth if the State postpones its beneficial collection of the tax until the date of vesting.

The Inheritance Tax Law or the Transfer Tax Law has been one of development by gradual changes tending to secure the State in its right to collect the tax without unfairness to the beneficiaries. The difficulties of practical procedure have been recognized by the courts and each successive attempt of the Legislature to clarify the procedure has been approved. If this Statute provided that the assessment should be made on face value at the time of the vesting, it could not be questioned. It should be just as free from challenge where, though the assessment is presently made, the tax is beneficially taken by the State only at the time of vesting.

The orders appealed from should be affirmed, with costs.

[fol. 72] STIPULATION WAIVING CERTIFICATION

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing papers are true and correct copies of the notice of appeal to the Court of Appeals, the order of affirmance of the Appellate Division of the Supreme Court for the First Department appealed from, and all of the papers upon which the said order of the said Appellate Division was founded, and upon which the courts below acted, and also of the order of the Surrogates' Court of the County of New York, entered upon the said order of the Appellate Division, and also the opinion herein of said Appellate Division, and certification thereof is hereby waived.

Dated New York, N. Y., June 29th, 1927.

Ehrich & Mencher, Attorneys for Petitioners.
Charles A. Curtin, Attorney for Respondent.

[fol. 73] IN SURROGATES' COURT OF NEW YORK COUNTY

[Title omitted]

ORDER ON REMITTITUR—December 15, 1927

Leo Salomon, et al., as executors of the Last Will and Testament of Myer Hecht, deceased, having appealed to the Court of Appeals of the State of New York from the

order of the Appellate Division of the Supreme Court of the State of New York for the First Department entered on the 4th day of March, 1927, affirming an order entered in the Surrogates' Court of the County of New York on the 7th day of May, 1926, which said order affirmed the pro forma order entered in the Surrogates' Court of New York County on the 11th day of November, 1925, and the said appeal having been duly argued in the said Court of Appeals of the State of New York, and after due deliberation the said Court of Appeals of the State of New York having directed that the order appealed from be affirmed with costs and disbursements, and having remitted the proceedings herein to this Court to be proceeded upon according to law,

Now, upon reading and filing the remittitur from the [fol. 74] Court of Appeals of the State of New York, and upon motion of Charles A. Curtin, attorney for the State Tax Commission, respondent, it is

Ordered that the said order of the Court of Appeals of the State of New York be and the same is made the order of this Court, and it is

Further ordered that pursuant to the aforesaid order the State Tax Commission of the State of New York recover from the estate of Myer Hecht, deceased, the sum of $119.20 costs and disbursements as taxed.

Original filed Dec. 16, 1927. A true copy. Martin G. McCue, Clerk of the Surrogates' Court.

John P. O'Brien, Surrogate.

[fol. 75] In Surrogate's Court of New York County

[Title omitted]

Order for Substitution of Attorneys and Consent—February 24, 1928

On reading and filing the annexed consent, and on motion of Taylor, Blanc, Capron & Marsh, it is

Ordered, that Taylor, Blanc, Capron & Marsh, attorneys with offices at No. 22 William Street, Borough of Manhatton, City, County and State of New York, be and they hereby are substituted in the above entitled matter in the place of Ehrich & Mencher, as attorneys for Leo Salomon, Jacques H. Hecht, Isidore M. Kastner and Pauline Hecht,

as executors of the Last Will and Testament of Myer Hecht, deceased, and Pauline Hecht, individually.

John P. O'Brien, Surrogate.

[fol. 76] We hereby consent that Taylor, Blanc, Capron & Marsh, attorneys with offices at No. 22 William Street, Borough of Manhattan, City, County and State of New York, be substituted in place of Ehrich & Mencher, as attorneys for Leo Salomon, Jacques H. Hecht, Isidore M. Kastner and Pauline Hecht, as executors of the Last Will and Testament of Myer Hecht, deceased, and Pauline Hecht, individually, in this matter, and that an order of substitution be entered herein without notice.

Dated New York, Feb. 7, 1928.

Ehrich & Mencher, Attorneys for Executors of the Last Will and Testament of Myer Hecht, Deceased. Leo Salomon, Jacques H. Hecht, Pauline Hecht, Isidore M. Kastner, Executors of the Last Will and Testament of Myer Hecht, Deceased. Pauline Hecht, Individually.

[fol. 77] *Duly sworn to by Leo Salomon et al. Jurats omitted in printing.*

[fols. 78–79½] Certificate to foregoing paper omitted in printing.

[fols. 80–81½] Bond on writ of error for $500.00, approved and filed February 9, 1928, omitted in printing.

[fol. 82] In Court of Appeals of New York

In the Matter of the Transfer Tax Upon the Estate of Myer Hecht, Deceased

Petition for Writ of Error in Surrogates' Court—Filed Feb. 9, 1928

To the Honorable Benjamin N. Cardozo, Chief Judge of the Court of Appeals of the State of New York:

The petition of Leo Salomon, Jacques H. Hecht, Isidore M. Kastner and Pauline Hecht, as executors of the last will

and testament of Myer Hecht, deceased, and Pauline Hecht, individually, respectfully shows:

I. That on or about the 22nd day of November, 1927, the Court of Appeals of the State of New York made and entered a final order, judgment and decree herein, in favor of the State Tax Commission of New York and against your petitioners above named, and that thereafter, in accordance with the law and practice of said State of New York, the said final order, judgment and decree of the Court of Appeals and the original records in this cause were remitted to the Surrogates' Court of the County of New York, wherein they now remain, with directions to enter the said final order, judgment and decree and carry the same into execution, and that thereupon, and on or about the 15th day of December, 1927 the said final order, judgment and decree of the Court of Appeals was entered in the said Surrogates' Court in conformity with the directions of said Court of [fol. 83] Appeals, and was made the final order, judgment and decree of said Surrogates' Court as well as of the said Court of Appeals.

II. That in the said final order, judgment and decree, and the proceedings had in this cause, certain errors were committed to the prejudice of your petitioners Leo Salomon, Jacques H. Hecht, Isidore M. Kastner and Pauline Hecht, as executors of the last will and testament of Myer Hecht, deceased, and those whom they represent, including Pauline Hecht, individually, all of which will appear in more detail in the assignment of errors which is filed in this cause with this petition.

III. That said Court of Appeals of the State of New York is the highset court of said State of New York in which a decision in this suit and matter could be had, and that the said final order, judgment and decree entered in the said Surrogates' Court as aforesaid, is the final order, judgment and decree which can be made or entered in this matter.

IV. That a printed copy of the record in the said Court of Appeals is herewith submitted, together with a certified copy of the said final order, judgment and decree of said Court of Appeals, and a certified copy of the order of the Surrogates' Court of the County of New York making the

said final order, judgment and decree that of said Surrogates' Court as well as of said Court of Appeals. That said Court of Appeals did not render any opinion in this cause.

V. That this suit or cause was commenced in the Surrogates' Court of the County of New York by your said petitioners as executors as aforesaid, pursuant to the requirements of the laws of the State of New York, for the purpose of having ascertained and fixed, the amount of the transfer tax payable to the State of New York by the estate of said [fol. 84] Myer Hecht, deceased, which your petitioners as executors as aforesaid, represented; and that in the said suit, culminating in the final order, judgment and decree aforesaid, there was and is, duly drawn into question by your petitioners, the validity of a statute of the State of New York, to wit: Chapter 144 of the Laws of 1925 of the State of New York, amending Sections 230 and 241 of the Tax Law of the State of New York entitled "An Act to Amend the Tax Law, in Relation to the Transfer Tax on Contingent Remainders," on the ground of its being repugnant to and in violation of the Fourteenth Amendment to the Constitution of the United States, and that said decision of said Court of Appeals was in favor of the validity of said New York State statute.

Wherefore, Leo Salomon, Jacques H. Hecht, Isidore M. Kastner and Pauline Hecht, as executors of the Last Will and Testament of Myer Hecht, deceased, and Pauline Hecht, individually, pray that a writ of error from the Supreme Court of the United States may issue in their behalf to the Surrogates' Court of the County of New York, State of New York, and the Surrogates thereof, for the correction of errors and the reversal of the final order, judgment and decree so complained of, and that a copy of the record, proceedings and papers in this matter, duly authenticated, may be sent to the Supreme Court of the United States.

Dated New York, this 6th day of February, 1928.

Ehrich & Mencher, Attorneys for Petitioners. Office and Post Office address: 20 Broad Street, Borough of Manhattan, New York, N. Y.

[fol. 84½] [File endorsement omitted.]

[fol. 85] In Court of Appeals of New York

[Title omitted]

Assignments of Error in Surrogates' Court—Filed February 9, 1928

Now comes Leo Salomon, Jacques H. Hecht, Isidore M. Kastner, and Pauline Hecht, as executors of the Last Will and Testament of Myer Hecht, deceased, and Pauline Hecht, individually, by Messrs. Ehrich & Mencher, their attorneys, and in connection with their petition for a writ of error respectfully submit that in the record, proceedings, decision and final order, judgment and decree of the Court of Appeals of the State of New York and of the Surrogates' Court of the County of New York upon the remittitur from said Court of Appeals in the above entitled matter, there is manifest error in this, to wit:

First. That the Court erred in holding that Chapter 144 of the Laws of 1925 of the State of New York, being an Act entitled "An Act to Amend the Tax Law, in Relation to the Transfer Tax on Contingent Remainders" approved March 16, 1925, and Article 10 of the Tax Law of said State in so far as it is amended by said Act, are constitutional and are not in conflict with or in violation of Section (1) of the Fourteenth Amendment to the Constitution of the United States and particularly that portion of Section (1) of said Fourteenth Amendment which reads as follows: "Nor shall any state deprive any person of life, liberty or [fol. 86] property without due process of law," or that portion of Section (1) of said Fourteenth Amendment which reads as follows: "Nor (shall any State) deny to any person within its jurisdiction the equal protection of the laws."

Second. That the Court erred in refusing to hold that the said Act (L. 1925 Ch. 144) and the said Tax Law insofar as it is amended thereby, are unconstitutional and in conflict with and in violation of Section (1) of the Fourteenth Amendment to the Constitution of the United States, and particularly that portion of said Section (1) which reads as follows: "Nor shall any state deprive any person of life, liberty or property without due process of law", or that portion of said Section (1) which reads as follows: "Nor

(shall any state) deny to any person within its jurisdiction the equal protection of the laws".

Third. That the final order, judgment and decree herein is in conflict with and in violation of the provisions of Section (1) of the Fourteenth Amendment to the Constitution of the United States, and particularly that portion of said Section (1) which reads as follows: "Nor shall any state deprive any person of life, liberty or property without due process of law", or that portion of said Section (1) which reads as follows: "Nor (shall any state) deny to any person within its jurisdiction the equal protection of the laws."

Fourth. That the Court erred in refusing to hold that the said Act (L. 1925 Ch. 144) and said Tax Law insofar as it was amended thereby, are repugnant to, in conflict with, and in violation of the Fourteenth Amendment to the Constitution of the United States, in that the tax imposed thereunder upon the transfer of the estate of said decedent is measured by property which was never owned or transferred by said decedent either at the time of his death or at any other time.

[fol. 87] Fifth. That the Court erred in refusing to hold that the said Act (L. 1925 Ch. 144), and the said Tax Law insofar as it is amended thereby, are repugnant to, in conflict with, and in violation of the Fourteenth Amendment to the Constitution of the United States, in that the tax imposed thereunder upon the transfer of the estate of the decedent is not based upon the true value of the property transferred, but on the contrary upon a false value required to be placed thereon for the purposes of said tax.

Sixth. The Court erred in refusing to hold that the said Act (L. 1925, Ch. 144) and the said Tax Law insofar as it is amended thereby, are repugnant to, in conflict with, and in violation of the Fourteenth Amendment to the Constitution of the United States, in that the method of valuation prescribed thereunder is false, arbitrary and capricious, and not calculated to ascertain the true value of the property subject to the tax.

Seventh. That the Court erred in refusing to hold that the said Act (L. 1925 Ch. 144), and the said Tax Law inso-

far as it is amended thereby, are repugnant to, in conflict with, and in violation of the Fourteenth Amendment to the Constitution of the United States, in that the petitioners, as executors as aforesaid, and those whom they represent, including Pauline Hecht individually, are deprived thereunder of the opportunity to show the true value of the property transferred by the said decedent, upon the transfer of which the said tax is imposed.

Eighth. That the Court erred in refusing to hold that the said Act (L. 1925 Ch. 144), and the said Tax Law insofar as it is amended thereby, are repugnant to, in conflict with, and in violation of the Fourteenth Amendment to the Constitution of the United States, in that the tax imposed hereunder operates unequally upon persons within the same [fol. 88] class, and results in arbitrary and unfair discrimination in favor of one as against another member of the same class and in that under said statutes there are established classifications for the purpose of said tax which are based on supposed differences which bear no reasonable or just relation to the subject in respect to which such classifications are made.

Ninth. That the Court erred in refusing to hold that the said Act (L. 1925 Ch. 144), and the said Tax Law insofar as it is amended thereby, are repugnant to, in conflict with, and in violation of the Fourteenth Amendment to the Constitution of the United States, in that under the provisions of the said statutes the taxpayer is not allowed to discharge the tax thereby imposed in order to prevent the running of interest on such tax, and in that said statutes require the payment of interest upon the tax thereby imposed without reference to the actual time that the tax has remained unpaid, and in that under the said statutes one taxpayer is required to pay interest on his tax so that the State may recoup itself for the loss of interest on a tax payable by another taxpayer, the payment of which latter tax has been postponed by the State.

Tenth. That the Court erred in refusing to reverse the order appealed from.

Wherefore, the petitioners pray that said final order, judgment and decree may be reversed and annulled, and

for such other and further relief as may be proper in the premises.

Ehrich & Mencher, Attorneys for Petitioners. Office & Post Office address: 20 Broad Street, New York, N. Y.

[fol. 88½] [File endorsement omitted.]

[fol. 89] In Court of Appeals of New York

[Title omitted]

Order Allowing Writ of Error. Filed in Surrogates' Court February 9, 1928

The above entitled matter coming on to be heard upon the petition of Leo Salomon, Jacques H. Hecht, Isidore M. Kastner and Pauline Hecht, as executors of the last will and testament of Myer Hecht, deceased, and Pauline Hecht, individually, for a writ of error from the Supreme Court of the United States to the Surrogates' Court of the County of New York, State of New York, and the Surrogates thereof, and upon the examination of said petition and the record of said matter, and desiring to give the petitioners an opportunity to present to the Supreme Court of the United States the questions presented by the record in said matter, it is

Ordered, that a writ of error be and is hereby allowed from the Supreme Court of the United States to the Surrogates' Court of the County of New York, State of New York, and the Surrogates thereof.

Dated February 7, 1928.

Benjamin N. Cardozo, Chief Judge of the Court of Appeals of the State of New York.

[File endorsement omitted.]

[fols. 90 & 90½] Citation in usual form, showing service, filed February 9, 1928, omitted in printing.

[fol. 91] In Court of Appeals of New York

Writ of Error—Filed in Surrogates' Court February 9, 1928

United States of America, ss:

The President of the United States of America to the Honorable the Surrogates of the Surrogates' Court of the County of New York, State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of a final order, judgment and decree which is in the said Surrogates' Court upon a remittitur from the Court of Appeals of the State of New York before you, or one of you, being the highest court of law or equity of the said State in which a decree or decision could be had in the matter of the transfer tax upon the estate of Myer Hecht, deceased, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, upon the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity; or wherein the title, right, privilege or immunity was claimed under the Constitution of the United States, and the decision was against the title, right, privilege or immunity especially set up or claimed under said Constitution, a manifest error hath happened to the great damage of Leo Salomon, Jacques H. Hecht, Isidore M. Kastner and Pauline Hecht, as executors of the last will and testament of Myer Hecht, deceased, and Pauline Hecht, individually, as by their petition appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings afore-[fol. 92] said, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, the 7th day of February, in the year of our Lord one thousand nine hundred and twenty-eight.

Abe Gilchriey, Clerk of the United States District Court, Southern District of New York. (Seal District Court of the United States, Southern District of N. Y.)

The foregoing writ is hereby allowed. Benjamin Meardoyo, Chief Judge of the New York Court of Appeals.

[fol. 92½] [File endorsement omitted.]

[fol. 93] In Surrogates' Court of New York County

[Title omitted]

Affidavit of No Opinion—Filed February 9, 1928

State of New York,
County of New York, ss:

Charles Angulo, being duly sworn, deposes and says: That he is an attorney at law and a member of the firm of Taylor, Blanc, Capron & Marsh, attorneys for the plaintiffs-in-error in the above entitled matter and is familiar with the proceedings had therein; that no opinion in the above entitled matter was rendered by the Court of Appeals of the State of New York in affirming the order of the Appellate Division of the Supreme Court of the State of New York, First Department, and that no opinion was rendered by the Surrogates' Court of the County of New York in rendering its order upon the remittitur from the said Court of Appeals.

Charles Angulo.

Sworn to before me this 20th day of February, 1928. C. G. C. Raphael, Notary Public, Kings County. Kings Co. Cl'k's No. 541. Reg. No. 9287. N. Y. Co. Cl'k's No. 651. Reg. No. 9474. Commission expires March 30, 1929.

[fol. 93½] [File endorsement omitted.]

[fol. 94] In Surrogates' Court of New York County

[Title omitted]

Stipulation re Transcript of Record—Filed February 21, 1928

It is hereby stipulated by and between the attorneys for the respective parties in the above entitled proceeding, that the papers to be transmitted to the Supreme Court of the United States, by the Clerk of the Surrogates' Court of the County of New York, State of New York, pursuant to a writ of error allowed therein by the Hon. Benjamin N. Cardozo, Chief Judge of the Court of Appeals of the State of New York, on February 7, 1928, and issued on that day by the Clerk of the United States District Court for the Southern District of New York, in the proceeding between said parties, are the following, and that this stipulation shall take the place of the praecipe required to be filed by counsel for the respective parties, under and pursuant to Rule 9 of the Rules of the Supreme Court of the United States:

First. The remittitur of the Court of Appeals to the Surrogates' Court of the County of New York, dated November 23, 1927, including therein the printed record used in the said Court of Appeals in said proceeding.

Second. The order on the remittitur of the said Court of Appeals, entered in the office of the Clerk of the Sur-[fol. 95] rogates' Court of the County of New York, on December 16, 1927.

Third. The petition for writ of error, assignment of errors, order of allowance of writ of error, bond and writ of error, filed with the Clerk of the Surrogates' Court of the County of New York, on February 9, 1928.

Fourth. The citation to the State Tax Commission of New York, defendants in error herein, dated February 7, 1928, filed with the Clerk of the Surrogates' Court of the County of New York, and served on said defendants in error on February 9, 1928.

Fifth. The affidavit of no opinion in the said Court of Appeals.

Sixth. The consent to the substitution of attorneys for plaintiffs in error and the order of substitution thereof.

Seventh. The present stipulation.

It is further stipulated that the Clerk of the Surrogates' Court of the County of New York may certify the transcript of record, together with all of the papers used in connection with the said writ of error without further formality.

Dated New York City, February 20th, 1928.

Taylor, Blanc, Capron & Marsh, Attorneys for Plaintiffs in Error. Charles A. Curtin, Attorney for Defendants in Error.

[fol. 95½] [File endorsement omitted.]

[fol. 96] In Surrogates' Court of New York County

Clerk's Certificate

State of New York,
County of New York, ss:

I, Martin G. McCue, Clerk of the Surrogates' Court of the County of New York, pursuant to a writ of error directed to the Honorable the Surrogates of the Surrogates' Court of the County of New York, State of New York, which said writ was allowed by the Honorable Benjamin N. Cardozo, Chief Judge of the Court of Appeals of the State of New York, and was issued by the Clerk of the United States District Court for the Southern District of New York, on the 7th day of February, 1928, do hereby certify the writing hereto attached to be a true, complete and perfect copy of the remittitur of the said Court of Appeals to the said Surrogates' Court of the County of New York, including therein the printed record used in the said Court of Appeals, the order on the remittitur of the said Court of Appeals, consent to substitution of attorneys for plaintiff in error and order of substitution thereof, and the bond on writ of error, in the proceedings entitled "In the Matter of the Transfer Tax upon

the Estate of Myer Hecht, deceased," as the same remains on file and on record in said matter in my office. That attached to said papers is the petition for writ of error, assignment of errors, order of allowance of writ of error, citation with admission of service thereof, writ of error, affidavit of no opinion and stipulation re transcript of record, all filed in the office of this Court, and the same are the originals thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Surrogates' Court of the County of New York, this 24th day of February, 1928.

Martin G. McCue, Clerk of the Surrogates' Court.
(New York Surrogate's Seal.)

[fol. 97] In Court of Appeals of New York

Court of Appeals,
State of New York, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany on the 22nd day of November, in the year of our Lord one thousand nine hundred and twenty seven, before the Judges of said Court.

Witness the Hon. Benjamin N. Cardozo, Chief Justice, presiding.

Wm. J. Armstrong, Clerk.

Remittitur—November 23, 1927

[fol. 98] In the Matter of the Transfer Tax upon the Estate of Myer Hecht, Dec'd

Be it remembered, That on the 1st day of July in the year of our Lord one thousand nine hundred and twenty seven Leo Salomon and others as Executors etc. and another the appellants in this cause, came here into the Court of Appeals by Ehrich & Mencher their attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department and State Tax Commission the respondent in said cause afterwards appeared in said Court of Appeals by Charles A. Curtin its attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid are hereunto annexed

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Charles Angulo of counsel for the appellants and by Mr. Seth T. Cole, of counsel for the respondent briefs filed by amici curiæ, and after due deliberation had thereon did order, and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same is hereby affirmed with costs.

And it was also further ordered, that the record aforesaid and the proceedings in this Court be remitted to the Surrogates' Court there to be proceeded upon according to law. [fol. 99] Therefore, it is considered that the said order be affirmed with costs, as aforesaid.

And, hereupon as well as the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Surrogates' Court, New York County before the Surrogates thereof according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in said Surrogates' Court before the Surrogates thereof, &c.

Wm. J. Armstrong, Clerk of the Court of Appeals of the State of New York.

Court of Appeals Clerk's Office, Albany

November 23, 1927.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

Wm. J. Armstrong, Clerk. (Seal.)

State of New York,
County of New York, ss:

I, Martin G. McCue, Clerk of the Surrogates' Court of said county, do hereby certify that I have compared the foregoing copy of Order of Court of Appeals affirming Order of the Appellate Division of the Supreme Court in the Matter of the Transfer Tax upon the Estate of Myer

Hecht, deceased, with the original record thereof now remaining in this office, and have found the same to be a correct transcript therefrom and of the whole of such original record.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Surrogate's Court of the County of New York, this 28th day of January, in the year of our Lord one thousand nine hundred and twenty-eight.

Martin G. McCue, Clerk of the Surrogate's Court.
(Seal New York Surrogate's Court.)

[fol. 100] Supreme Court of the United States

Statement of Points to be Relied upon and Designation by Plaintiffs-in-Error of Parts of the Record to be Printed—Filed March 2, 1928

Now come Leo Salomon, Jacques H. Hecht, Isidore M. Kastner and Pauline Hecht, as executors of the last will and testament of Myer Hecht, deceased, and Pauline Hecht, individually, by Edward H. Blanc, their attorney, and state that they intend to rely upon the points as set forth in the assignment of errors filed herein in prosecution of their writ of error herein, and that the parts of the record to be printed herein shall be the entire transcript of the record as certified by the Clerk of the Surrogates' Court of the County of New York, State of New York.

Edward H. Blanc. Office and Post Office address: No. 22 William Street, New York City, N. Y.

Dated New York, Feb. 28, 1928.

[fol. 101] Service of copy of within is hereby admitted Feb. 29, 1928. Charles A. Curtin, Atty. for State Tax Com.

[fol. 102] [File endorsement omitted.]

Endorsed on cover: File No. 33,261. New York Surrogates' Court of New York County. Term No. 809. Leo Salomon, Jacques H. Hecht, Isidore M. Kastner, et al., etc., plaintiffs in error, vs. State Tax Commission of New York. Filed February 27th, 1928. File No. 33,261.